

§ 764.102

7 CFR Ch. VII (1–12 Edition)

judgments do not include those filed as a result of action in the United States Tax Courts.

(h) *Federal crop insurance violation.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(i) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:

(1) Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

(2) On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.

(3) Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last 5 years.

(j) *Borrower training.* The applicant must agree to meet the training requirements in subpart K of this part.

(k) *Operator of a family farm.* Except for CL:

(1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must be operators of a family farm.

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm;

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

(4) If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(l) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

EFFECTIVE DATE NOTE: At 76 FR 75434, Dec. 2, 2011, § 764.101 was amended by revising paragraph (i)(3), effective Jan. 3, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(3) *Farming experience.* For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.

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§ 764.102 General limitations.

(a) Limitations specific to each loan program are contained in subparts D through I of this part.

(b) The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow,

circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

EFFECTIVE DATE NOTE: At 76 FR 75434, Dec. 2, 2011, § 764.102 was amended by revising paragraph (f), effective Jan. 3, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 764.102 General limitations.

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(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation, an EM loan may cover qualified equine losses as specified in subpart I of this part.

§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through I of this part.

(b) All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart I of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount will be taken when available, except for downpayment loans and youth loans.

(d) The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(e) The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of \$5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section. This requirement does not apply to downpayment loans, conservation loans, or youth loans.

[72 FR 63298, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008; 75 FR 54015, Sept. 3, 2010]

§ 764.104 General real estate security requirements.

(a) *Agency lien position requirements.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate;

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property,